

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

In Re:	§	
	§	
Wheeler Hospitality, Inc.,	§	Case No.10-20166-rlj-11
	§	Chapter 11 Proceeding
	§	
Debtor.	§	

EMERGENCY MOTION FOR INTERIM AUTHORIZATION TO USE CASH COLLATERAL

TO THE HONORABLE ROBERT L. JONES, Bankruptcy Judge:

Wheeler Hospitality, Inc. ("WHI"), the debtor in possession in the above-captioned case ("Debtor" or "Debtor in Possession"), moves the Court for an order authorizing the Debtor to use the proceeds of the accounts receivable, rents and income derived from Debtor's operation of the Baymont Inn & Suites, located in Wheeler, Texas, for necessary business operating expenses. The accounts receivable, rents and income are collateral subject to a security interest in favor of CitizensBANK of Shamrock ("CBS" or "Bank"), a secured creditor in the above-captioned Chapter 11 case, and constitute cash collateral in which CBS has an interest. Debtor respectfully represents to the Court as follows:

I.
JURISDICTION AND BACKGROUND

1. On March 12, 2010 ("Petition Date"), Debtor filed its voluntary petition under Chapter 11 of the Bankruptcy Code. Debtor is managing its business and affairs pursuant to Bankruptcy Code §§ 1107 - 08.
2. This motion is filed under 11 U.S.C. §§ 361 and 363.
3. This is a core proceeding under 28 U.S.C. § 157(b).
4. No trustee has been appointed, and WHI remains as Debtor in Possession.
5. Debtor operates a business in Wheeler County, Texas, named the Baymont Inn & Suites

("Baymont Inn").

6. The purpose of Debtor's business is to provide temporary lodging to persons visiting or traveling through the areas in and around Wheeler County, Texas.

II.

FINANCING HISTORY

7. Over the past 2 years, Debtor has entered into Promissory Notes with CBS in order to obtain loans to be used in constructing the Baymont Inn.

8. On the Petition Date, Debtor believes it was indebted to CBS for approximately \$2,400,000.00.

9. On the Petition Date, Debtor's debt to CBS was secured by the following: (1) a 2.103 acre tract of land and a 1.306 acre tract of land (collectively as "Baymont Property"), both located in Section 611, Block H, Childress County, Texas; (2) any and all improvements on the Baymont Property; (3) all equipment, fixtures, furnishings, inventory and personal property located on the Baymont Property; (4) all rents, revenues, profits or other benefits of the Baymont Property; and (5) an absolute assignment of all rents, issues, income, receipts and profits from the Baymont Property.

III.

CASH COLLATERAL

10. CBS asserts a lien position on Debtor's inventories, the above listed real properties, rents and income which would be superior to all others.

11. Accounts receivable, rents and income received by Debtor via operation of the Baymont Inn constitute cash collateral pursuant to Bankruptcy Code §§ 363 and 552(b)(2). Debtor reserves the right to contest the validity of the liens claimed by CBS.

12. Debtor requests permission to use the above-described cash collateral consisting of accounts receivable, rents and income generated by operation of the Baymont Inn ("cash collateral") in the normal course of its business for a thirty day (30) period following the entry of this order. In

consideration for such usage, the Debtor agrees to the following terms:

- a. To the extent of the amount of cash collateral used plus interest accrued thereon, CBS will receive a replacement lien on and security interest in all post-petition accounts receivable and rents and income. The replacement lien will be a first, senior and prior lien on the items covered. The replacement lien granted to CBS shall be deemed perfected and CBS shall not be required to file financing statements to perfect the superior replacement lien granted to CBS.
- b. Debtor will provide adequate protection payments to CBS.
- c. Debtor agrees to execute necessary security agreements, financing statements and assignments to provide CBS with the replacement liens described herein. Debtor also agrees to pay any filing fees. The security agreements and financing statements will be on CBS's standard forms and the assignments will be on forms acceptable to the assignee.
- d. Debtor will forward copies of the Monthly Operating Reports that are to be filed with the Bankruptcy Court and the Chapter 11 Trustee, to a person or agency designated by CBS.

IV.

PROJECTED INCOME AND REQUIRED CAPITAL

13. Debtor's projected March to September 2010 gross income for the Baymont Inn is estimated at \$542,000.00.

14. Attached are copies of Debtor budget (Exhibit "A"). During the next 30 days, Debtor will require use of cash collateral to meet its budget and maintain its business operations.

15. Debtor anticipates that its plan of reorganization will provide for the payment of the entire amount of the CBS's indebtednesses. Debtor believes that its business operations are subject to reorganization.

V.

SUMMARY

16. Debtor seeks to use the above-described cash collateral, consisting of accounts receivable, rents and income, until such time that the Court enters a final order authorizing the use of cash collateral, but for a period of no more than thirty days from the entry of an order authorizing the interim use requested.

17. Debtor believes the terms described above are the only available means to obtain cash

collateral usage. Thus, to avoid immediate and irreparable harm to the estate, Debtor requests immediate authorization to use cash collateral.

WHEREFORE, Debtor in Possession respectfully requests the Court to enter an Order authorizing Debtor to use cash collateral consisting of Debtor's accounts receivable, rents and income on an interim basis. Debtor further requests that the Court approve the terms of Debtor's use of cash collateral as set forth in paragraph III above. Should Debtor be unable to make its payments to CBS, then to the extent that CBS is not adequately protected, CBS will be granted a superpriority lien claim pursuant to 11 U.S.C. § 507(b). Debtor asks for such other and further relief as the Court may deem necessary and proper.

Dated: 03/17/2010

Respectfully submitted,

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By: /s/ Bill Kinhead
Bill Kinhead
State Bar No. 11477400
ATTORNEY FOR DEBTOR

Baymont Inn & Suites - Wheeler Texas**EXHIBIT A**

Vendor List	Average Monthly Amount
Franchise Fees	\$ 5,200.00
Atmos Energy - Gas	\$ 650.00
Electric Bill	\$ 3,800.00
Water Bill	\$ 600.00
Direct TV	\$ 450.00
Breakfast Supplies	\$ 2,400.00
Windstream - Telephone	\$ 560.00
Pool Supplies	\$ 200.00
City occupancy Tax	\$ 3,200.00
State occupancy Tax	\$ 4,500.00
Room Supplies	\$ 1,000.00
Laundry Supplies	\$ 450.00
Office Supplies	\$ 150.00
Maintance supplies	\$ 350.00
Elevator Maintance	\$ 250.00
Property Insurance	\$ 1,000.00
Pest control	\$ 90.00
Bank Loan	\$ 18,500.00
Payroll	\$ 15,000.00
Accounting payroll fees	\$ 160.00
Misc expenses	\$ 2,000.00
Bankruptcy Expenses	\$ 2,000.00
Total	\$ 62,510.00

CERTIFICATE OF SERVICE

This is to certify that on this 17th day of March, 2010, a true and correct copy of the foregoing instrument was served upon the parties listed below by depositing same in the United States Mail, first class, postage prepaid, and addressed as stated, by EMAIL or by ECF.

ECF:

All Parties listed as receiving ECF notices in the cases in which this document is filed

MAIL:

None

EMAIL:

See Attached Notice List

/s/ Bill Kinkead

Bill Kinkead

Attorney for Debtors

NOTICE LIST

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Borger Hospitality, Inc.
Decatur Hospitality, Inc.
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